



In the Matter of:

MARK J. KELLY,

ARB CASE NO. 02-075

COMPLAINANT,

ALJ CASE NO. 2000-ERA-35

v.

DATE: May 6, 2004

LAMBDA RESEARCH, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Mark J. Kelly, pro se, Dillsboro, Indiana

For the Respondent:

**Robert A. Dimling, Esq., Mekesha H. Montgomery, Esq.
Frost Brown Todd, LLC, Cincinnati, Ohio**

ORDER DENYING MOTION TO REVERSE FINAL DECISION

On March 31, 2004, the Administrative Review Board issued a Final Decision and Order (F. D. & O.) in this case arising under the Energy Reorganization Act (ERA or Act), 42 U.S.C.A. § 5851 (West 1995). In the F. D. & O., the Board adopted the ALJ's recommended decision and dismissed Mark J. Kelly's complaint because he had failed to establish that his employer, Lambda Research, retaliated against him.

On April 30, 2004, Kelly filed "Complainant's Petition for Reconsideration En Banc¹ and Motion for Reversal Due to Respondent Misconduct." In support of his Motion, Kelly filed a 15-page memorandum and 23 exhibits.

¹ This motion was not reviewed en banc. Rather, the panel that originally decided the case also reviewed the reconsideration motion.

The Board has authority to reconsider its decisions arising under the ERA. See *Macktal v. Brown and Root, Inc.*, ARB Nos. 98-112, 98-112A, ALJ No. 86-ERA-23, Order Granting Reconsideration (ARB Nov. 20, 1998). As we said in *Macktal*,

The ERA is directed generally to the development and safe utilization of energy resources and places. Nothing in the statutory text of the employee protection provision or elsewhere in the ERA addresses the issue of reconsideration of final orders Therefore, unless reconsideration by the Board would interfere with, delay or otherwise adversely affect accomplishment of the Act's safety purposes and goals, the Board has **inherent authority** to reconsider a final ERA order.

Macktal, slip op. at 3-5 (emphasis added) (citations and footnotes omitted). In the present case, reconsideration would not interfere with, delay, or otherwise affect the fulfillment of the ERA's safety purposes and goals. *Id.*

Nevertheless, upon reconsideration, we must deny Kelly's request for reversal. The essence of Kelly's argument is that the ALJ erred in specifically finding Lambda's president, Paul Prevey, to be a credible witness. Kelly argues that this was error because, in his opinion, Prevey committed fraud on the court and repeatedly perjured himself. In support of his motion, Kelly, for the most part, repeated the mostly irrelevant charges and accusations he made in his original appeal briefs filed with the Board. Such accusations were not persuasive during our initial review, and they are not persuasive now. Accordingly, we deny Kelly's motion to reverse our March 31, 2004, dismissal of his case.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge